

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

A.A.M.C. INC.,

Plaintiff,

v.

CIVIL ACTION NO. 1:06CV101
(Magistrate Judge John S. Kaull)

B.A.C. DISTRICT COUNCIL OF
WEST VIRGINIA BRICKLAYERS/
CEMENT MASONS LOCAL UNION NO. 15,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION FOR STAY PENDING APPEAL TO THE
FOURTH CIRCUIT**

On November 30, 2007, the Clerk of this Court entered judgment in favor of A.A.M.C. Inc. against B.A.C. District Council Bricklayers/Cement Masons Local Union No. 15 [Docket Entry 80].

On December 17, 2007 Defendant filed its Motion For Extension of Time To File An Appeal To The Fourth Circuit [Docket Entry 81] citing therein that it needed time to review and consider offers of settlement made.

By order dated December 18, 2007 Defendant's Motion For Extension of Time To File An Appeal To The Fourth Circuit [Docket Entry 81] was granted and Defendant's time to file an appeal to the Fourth Circuit was extended to but not later than the 30th day of January 2008.

Thereafter Plaintiff filed an executed Bill of Costs and noticed the same for response and appearance on or before January 18, 2008.

On January 15, 2008 Defendant filed its Motion For Stay Pending Appeal. [Docket Entry 85].

FRCivP 58(c)(1) provides: "Entry of judgment may not be delayed, *nor the time for appeal extended*, in order to *tax costs* or award fees, except as provided in Rule 58(c)(2)." Rule 58(c)(2) provides: "When a timely motion for attorney fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and has become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59."

This Court previously granted Defendant's motion for an extension of the time limit within which Defendant would be required to file its notice of appeal pursuant to FRAppellateP 4(a)(5)(A)(I) and (C) in order to permit the Defendant the time it requested to explore its settlement options. The Clerk's judgment had already been entered. Costs had not been taxed. While the Court granted Defendant an extension, it did not stay execution on the judgment because that was not then requested.

Defendant now complains that Plaintiff filed its Bill of Costs in accord with 28 USC §§ 1920¹ on December 17, 2007. [Docket Entry 83]. The Clerk duly gave notice of the filing and provided all parties with a due process opportunity to be heard in the event the costs were disputed. [Docket Entry 84]. FRCivP 54(d) provides: "Except when express provision therefore is made either in a statute or the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs... . Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the Court."

While it is clear that this Court is not authorized to extend the time for an appeal in order to tax costs, the rule does not prevent taxation of costs during the time extension. Defendant offers no authority supporting a delay in the Clerk's taxation of costs. Defendant offers no reason why costs should not be taxed against it. Defendant offers no reason why the particular costs claimed by Plaintiff's should not be taxed by the Clerk and thereby be made a part of the Judgment.²

The Court further notes that Plaintiff has made no attempt to collect on the judgment or indicated any attempt collect on the taxation of costs if and when they are allowed by the Clerk. Therefore, the only complaint being lodged as any basis for the requested blanket stay is that related

¹28 USC §§ 1920 provides: A bill of costs shall be filed in the case and, upon allowance, included in the judgment and decree."

²Defendant has an adequate remedy should it have reason to challenge any amount taxed as costs.

to the Clerk's prospective performance of his duty to assess the costs claimed by Plaintiff which do not appear to include a claim for attorneys fees.

Upon consideration of all which the Court **DENIES** Defendant's Motion For Stay Pending Appeal To the Fourth Circuit. [Docket Entry 85].

The Clerk is directed to transmit certified copies of this Order to all counsel of record herein.

Dated: January 17, 2008

/s *John S. Kaull*
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE